

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ASCENCION CAZARES, BENJAMIN F.
DELACRUZ, FANNY JISSELLE LIZARDO
FABRE, GABINO ROMANO HERNANDEZ,
HERMENEJILDO ANGEL PRUDENTE, IDOR
JEAN LUCKNER, JOSE CEDANO, JOSE G.
REYES, LUIS ALBERTO SALAS UMANA,
WENDY PATRICIA DAMAS, POCO J.
QUEDRAOGO, AND SUSANA E. ROBLES
MARTINEZ, *individually and on behalf of others
similarly situated,*

Plaintiffs,

-against-

2898 BAGEL & BAKERY CORP. (d/b/a
NUSSBAUM & WU) and SHLOMO SELA

Defendants.

18cv5953 (AJN) (DF)

ORDER

DEBRA FREEMAN, United States Magistrate Judge:

By Order dated June 7, 2021 (Dkt. 62), this Court directed Plaintiffs to supplement their inquest submissions no later than June 25, 2021, with evidence to support the requests for damages by plaintiffs Fanny Jisselle Lizardo Fabre (“Lizardo”),¹ Idor Jean Luckner (“Luckner”), Jose G. Reyes (“Reyes”), Luis Alberto Salas Umana (“Salas”), Wendy Patricia Damas (“Damas”), and Poco J. Quedraogo (“Quedraogo”). Plaintiffs did not do so, but rather, on June 25, sought an extension of time to make the supplemental filing, pending resolution of counsel’s motion to withdraw from representing Damas in this action. This Court has now provided Damas with an opportunity to respond to the motion to withdraw and has set a

¹ On page 4 of its June 7 Order, where this Court listed the plaintiffs whose submissions were insufficient, it inadvertently omitted plaintiff Lizardo, but it should have been clear to Plaintiffs’ counsel that the list was intended to include this plaintiff, given that, like the others identified by this Court, Lizardo had failed to submit a sworn affidavit or a declaration under penalty of perjury to support her damages claim.

conference for November 9, 2021 to address that motion. Accordingly, it is hereby ORDERED that:

1. The deadline for Plaintiffs to file their supplemental inquest submission, pursuant to this Court's June 7 Order, is extended to November 23, 2021. No later than that date, Plaintiffs are directed to serve a copy of their supplemental submission, together with a copy of this Order and this Court's June 7 Order, on Defendants, by a means reasonably calculated to reach them, and to file proof of such service on the Docket.²

2. Defendants' time to respond to Plaintiffs' supplemental submission is extended to December 10, 2021.

3. As previously stated, however (*see* June 7 Order, at 5), defendant 2898 Bagel & Bakery Corp. (d/b/a Nussbaum & Wu) ('2898 Bagel') may not, as a corporate entity, appear in this Court without an attorney. For this reason, 2898 Bagel is again cautioned that any response to Plaintiffs' supplemental submission that it wishes to file, including any request for a hearing with respect to that submission, must be made through counsel, in order for that response to be considered by the Court.

4. If the individual defendant, Shlomo Sela, wishes to respond to Plaintiffs' supplemental submission *pro se* (in other words, without counsel), then he may file his response by mailing it to this Court's *Pro Se* Office, at the following address:

² In light of the pending motion by Plaintiffs' counsel to withdraw from representing Damas, Plaintiffs' counsel is additionally directed to serve a copy of both this Order and this Court's prior June 7 Order forthwith on Damas, together with a Spanish translation of each, by means reasonably calculated to reach her, and to file proof of such service on the Docket no later than October 13, 2021.

Pro Se Intake Unit
U.S. Courthouse
500 Pearl Street
New York, NY 10007

5. Any submissions by Defendants should include the case number for this action (18cv5953) at the top of the submissions.

6. IF DEFENDANTS FAIL TO RESPOND TO PLAINTIFFS' SUPPLEMENTAL SUBMISSION BY DECEMBER 10, 2021, THEN THIS COURT WILL PROCEED TO ISSUE A REPORT AND RECOMMENDATION CONCERNING DAMAGES ON THE BASIS OF PLAINTIFFS' WRITTEN SUBMISSIONS ALONE. FURTHER, THIS COURT WILL NOT HOLD A HEARING ON DAMAGES, UNLESS ANY DEFENDANT REQUESTS A HEARING, IN WRITING, BY DECEMBER 10, 2021. *See Action S.A. v. Marc Rich & Co.*, 951 F.2d 504, 508 (2d Cir. 1991) (Fed. R. Civ. P. 55(b)(2) "allows but does not require . . . a hearing"); *Fustok v. ContiCommodity Servs. Inc.*, 873 F.2d 38, 40 (2d Cir. 1989) ("[I]t [is] not necessary for the District Court to hold a hearing, as long as it ensured that there was a basis for the damages specified in a default judgment.").

Dated: New York, New York
October 6, 2021

SO ORDERED



DEBRA FREEMAN
United States District Judge

Copy to:

Plaintiffs' Counsel (via ECF)